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In the Supreme Court of the United States

OCTOBER TERM, 1989

DEPARTMENT OF HEALTH SERVICES OF CALIFORNIA, ET AL., PETITIONERS

v.

CITIZENS ACTION LEAGUE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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9 pp

QUESTION PRESENTED

Section 1917(b)(1) of the Social Security Act, 42 U.S.C. 1396p(b)(1), allows States to recover Medicaid benefits paid to a beneficiary from the beneficiary's "estate" after his death, but the Act does not define "estate." The question presented is whether a State is restricted to a common-law definition of estate, *i.e.*, the deceased's probate estate, or whether it can also seek recovery from property that the deceased owned in joint tenancy and which thus passes by right of survivorship.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-16) is reported at 887 F.2d 1003. The opinion of the district court (Pet. App. 17-28) is reported at 670 F. Supp. 874.

JURISDICTION

The judgment of the court of appeals was entered on October 23, 1989. A petition for certiorari was filed on December 28, 1989.

STATUTES INVOLVED

Title 42, Section 1396a, of the United States Code provides in relevant part:

(a) A State plan for medical assistance must –

* * * * *

(18) comply with the provisions of section 1396p of this title with respect to liens, adjustments and recoveries of medical assistance correctly paid, and transfers of assets[.]

Title 42, Section 1396p(b)(1), of the United States Code provides in relevant part:

> No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made except –
>
> * * * * *
>
> (B) in the case of any other individual who was 65 years of age or older when he received such assistance, from his estate.

California Welfare and Institutions Code § 14009.5 (West Supp. 1989) authorizes the California Department of Health Services to

> claim against the estate of the decedent, or against any recipient of the property of that decedent by distribution or survival an amount equal to the [California Medical Assistance Program] payments * * * received.

STATEMENT

The Medicaid statute permits States to recover from a deceased recipient's "estate" the amount of medical assistance properly paid to that recipient if he was 65 years or older when he received the assistance. 42 U.S.C. 1396p(b)(1). A California statute, Cal. Welf. & Inst. Code § 14009.5 (West Supp. 1989), authorizes recovery from property that the deceased recipient held in joint tenancy (which passes to the joint tenant by right of survivorship), as well as from property that passes to his heirs or beneficiaries through probate. Consistent with the federal statute (42 U.S.C. 1396p(b)(2)), however, Section 14009.5 does not

permit recovery from the recipient's surviving spouse or his minor or disabled child. In addition, the California statute allows for the waiver of all or part of the State's claim if its Department of Health Services determines that enforcement would cause substantial hardship to dependents of the recipient. Cal. Welf. & Inst. Code § 14009.5 (West Supp. 1989); see Pet. App. 20-21. Moreover, California only seeks recovery when the property is sold. *Ibid.* To be eligible for Medicaid benefits in California, recipients can own only minimal resources other than their homes. See Cal. Welf. & Inst. Code § 14006(c) (West Supp. 1989); 42 U.S.C. 602(a)(7)(B), 1382b(a)(1), 1396a(a)(10)(A)(i). Thus, the property held in joint tenancy is nearly always the deceased recipient's home.

Respondents Citizens Action League and others brought this action in the United States District Court for the Northern District of California alleging that Cal. Welf. & Inst. Code § 14009.5 (West Supp. 1989) is contrary to the federal statute insofar as it permits recovery of Medicaid benefits from a surviving joint tenant after the beneficiary's death. The plaintiff class was certified to include California residents or landowners (1) who succeeded or will succeed to real property through right of survivorship upon the death of a recipient of Medicaid through the California program, and (2) who have been or will be subject to a claim pursuant to Section 14009.5. Pet. App. 8. They asserted that the surviving joint tenants affected by Section 14009.5 are typically elderly, disabled, or indigent persons who became joint tenants in the home of a Medicaid recipient, who are often a relative other than a spouse or minor or disabled child, and who provided care to the recipient in his final years, thereby saving the State the costs of institutional care. Pet. App. 20. Originally, the plaintiffs sued only California officials, but the district court ordered that the Secretary of Health and Human Services be joined as a defendant. Order of March 2, 1987.

While this action was pending, the Administrator of HHS's Health Care Financing Administration (HCFA) wrote California:

> [HCFA] has not construed "estate" in the context of 42 U.S.C. § 1396p(b)(1)(B) as being limited to the probate estate, nor has it issued any definitive pronouncements on this question. Therefore, States are not bound to consider "estate" to mean "probate estate." Thus, if State law does not require[ ] that "estate" be limited to "probate estate," that State would not be precluded from considering property which passes by operation of survivorship under title held in joint tenancy to be part of the deceased's estate for purposes of recoveries under Medicaid.

Pet. App. 10-11. California relied upon this letter in moving for summary judgment.

The district court granted summary judgment for the State. The court did not give great deference to HCFA's letter, stating that "it lacks the indicia of deliberate administrative review." Pet. App. 23. And the court stated both that "the common law meaning of 'estate' favors plaintiffs," and that the legislative history was "inconclusive." Pet. App. 26, 27. Nevertheless, the court upheld the California statute, relying upon what it identified as the policy of 42 U.S.C. 1396p(b) to "recover some of the cost of * * * medical assistance after the recipient dies." Pet. App. 27. It accepted the State's argument that "[t]hat purpose * * * should not be thwarted by the technical device of joint tenancy." *Ibid.* And it rejected plaintiffs' argument that this holding would undermine the congressional policy to encourage "voluntary provision of home-care by would-be [joint] tenants." *Ibid.* "The weakness of this argument is the uncertain and incomplete correlation between those who furnish assistance to * * * [beneficiaries] and those who enter into joint tenancies with them," the court concluded. Pet. App. 28.

The Ninth Circuit reversed. Pet. App. 1-16. The majority held that the California statute was overly broad and inconsistent with the federal Medicaid Act "[b]ecause 'estate' under common law does not include property formerly held in joint tenancy, and because the HCFA letter is not compelling on this issue." Pet. App. 14. The dissent, noting that "there is some doubt what Congress meant," compared the effects of adopting the common-law definition and the State's construction. In the dissent's view, the State's construction, unlike the common-law definition, furthered the rational administration of the statute that Congress intended by permitting recovery from heirs and joint tenants alike. Pet. App. 15-16.

ARGUMENT

1. For the reasons given in the petition (at 4-8, 12-15), we agree that the court of appeals erred in holding that Cal. Welf. & Inst. Code § 14009.5 (West Supp. 1989) is contrary to 42 U.S.C. 1396p(b)(1). As the letter of HCFA's Administrator stated, in the absence of a federal limitation on the meaning of "estate," California was free to define that term to include property that the deceased beneficiary held in joint tenancy, as well as property that passed through probate. California's definition is consistent with the federal statutory purpose to provide medical assistance only to those "whose income and resources are insufficient to meet the costs of necessary medical services." 42 U.S.C. 1396. The court of appeals' limited construction of the word "estate" in the Medicaid statute, therefore, violates the principle that the words of a statute should be construed in accord with their context and purpose. Cf. *McNally* v. *United States*, 483 U.S. 350 (1987); *Richards* v. *United States*, 369 U.S. 1, 11 (1962).

2. While we believe the case was wrongly decided, the United States did not file a petition for certiorari in this case. California is the only State that authorizes recovery of correctly paid medical assistance benefits from joint tenancy property. Pet. App. 20. Thus, the issue lacks national significance, and there is no conflict among the circuits. Moreover, the Ninth Circuit's decision does not rule out the possibility that the Secretary could issue a formal regulation defining the word "estate" in a manner different from that which the court below identified as its common-law meaning. In any event, Congress frequently amends the Medicaid statute; corrective legislation is also a realistic alternative to this Court's review of the Ninth Circuit's construction of the statute.

In light of the limited nature of this Court's resources, we do not believe that this case warrants certiorari.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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